

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 5/26/04 Item: 4.d.3.

File Number
DA-BEA – BEA Systems Development Agreement

Application Type
Development Agreement

Council District
4

Planning Area
North San José

Assessor's Parcel Number(s)
097-45-048

PROJECT DESCRIPTION

Completed by: Mike Mena

Location: West side of North First Street on both sides of Component Drive.

Gross Acreage: 41.0 Net Acreage: NA Net Density: NA

Existing Zoning: IP(PD) Planned
Development Zoning District Existing Use: Vacant

Proposed Zoning: IP(PD) Planned
Development Zoning District Proposed Use: Research and Development/Industrial Office

GENERAL PLAN

Completed by: MM

Land Use/Transportation Diagram Designation
Industrial Park

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: MM

North:	PG&E Substation/Industrial Office	IP Industrial Park
East:	Industrial Office	IP Industrial Park, A(PD) Planned Development
South:	Industrial Park / Office	IP Industrial Park, A(PD) Planned Development
West:	Vacant/US 101/ Office	A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: MM

☒ Environmental Impact Report pending adoption on May 26, 2003
☐ Negative Declaration circulated on

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: MM

Annexation Title: Orchard No. 69

Date: April 26, 1977

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial

Date: _____

Approved by: _____
☐ Action
☒ Recommendation

APPLICANT/OWNER/

BEA Systems, Inc.
2347 North First Street
San Jose, CA 94131

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: MM

Department of Public Works, Fire Department

None Received

Other Departments and Agencies

None Received

GENERAL CORRESPONDENCE

GHB – The Market Place LP dated May 3, 2004

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, BEA Systems, Inc., has requested a Development Agreement by and between the City of San José and BEA Systems, Inc. The subject Agreement would allow for the development of up to 2.8 million square-feet of Industrial Park development on the subject site through the allocation of 1,378,568 square-feet of transferable floor area from the “pool” under North San Jose Area Development Policy.

A Development Agreement is a contract negotiated between a project proponent and a public agency that governs the land uses to be allowed for a particular project, and which will benefit both parties. In this instance, the proposal is that the City would benefit in that the subject Agreement would facilitate an industrial/office park development by BEA, for the use of a corporate headquarters type industrial park campus within San Jose. Specifically, BEA proposes the Development Agreement meets the necessary criteria for the City to issue a Development Agreement in that the proposed project is for an industrial office, research and development or similar use, would involve parcel(s) at least 5 acres in size, would create at least five hundred jobs, would be used as a corporate headquarters by the primary user of the development, and would qualify as a “Special Handling” project per City requirements. The Development Agreement would include provisions that allow BEA to transfer all or a portion of the entitlement covered under the Agreement (potentially resulting in subdivision of the site in to no more than 3 smaller campuses) to other “End Users” that would employ at least 500 employees at the site.

A Planned Development Zoning (PDC93-017) was approved for Hewlett Packard in 1994 to allow 3,220,900 square feet of development on one large site that consisted of the BEA project site and the vacant parcels on the west side of Orchard Parkway. Since that time, BEA has acquired the property between Orchard Parkway and North First Street on either side of Component Drive. Subsequent approvals from 2001 to 2003 entitled up to 1,421,432 square feet, a share of the original Hewlett Packard square footage, and a maximum building height of 210 feet on the subject site. The Agreement would also include the vesting of applicable City ordinances and policies pertaining to this development. A corresponding application for a Planned Development Zoning District (PDC04-002) is also pending and is scheduled to be heard by the Planning Commission immediately prior to this item.

This Agreement would apply to an approximately 41.0 acre site located on the westerly side of North First Street and on both sides of Component Drive in North San Jose. The subject site is currently vacant.

ENVIRONMENTAL REVIEW

The environmental impacts of this project, which includes the Development Agreement as well as the pending Planned Development Zoning, were addressed by an Environmental Impact Report (EIR) entitled “BEA Development Project”. The EIR adequately addresses impacts, mitigation measures and project alternatives that would avoid or reduce impacts. The EIR also analyzed potential land use compatibility, traffic, air quality, noise, biological resources, hydrology, cultural resources, hazardous materials, visual, geology and soils, utility and service system impacts resulting from the project.

The EIR identifies that implementation of the project would result in significant unavoidable impacts upon vegetation and wildlife (resulting from a loss of Burrowing Owl habitat), traffic levels on regional freeway segments, and regional air quality. The project EIR also identifies a cumulative significant unavoidable impact for traffic congestion, air quality and the loss of Burrowing Owl habitat. The EIR identifies one project alternative, the Clustered/Reduced Scale Development Alternative, which would be environmentally superior by reducing the impact upon Burrowing Owl habitat. This alternative would place the proposed development on Parcels A and B only, thus providing the opportunity to maintain an urban scale of development along North First Street and leaving Parcel C undeveloped Burrowing Owl habitat. However, this alternative would not meet the objectives of the proposed project, though it would allow more office/R&D space than is provided for under current entitlements. Specific discussion regarding the significant unavoidable impacts from the proposed project is provided in the accompanying staff report for the proposed Planned Development rezoning (PDC04-002).

Because the project will have significant unavoidable impacts, the City Council will be required to adopt a statement of overriding considerations as part of the Resolution of EIR findings explaining how the benefits of the project outweigh these impacts.

GENERAL PLAN CONFORMANCE

The proposed project conforms to the City of San José's adopted San José 2020 General Plan Land Use/Transportation Diagram. The subject property is designated *Industrial Park*. The Industrial Park designation is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices. Industrial uses are consistent with this designation insofar as any functional or operational characteristics of a hazardous or nuisance nature can be mitigated through design controls. Areas designated as industrial park also allow for a limited amount of commercial support uses, when those uses are of a scale and design providing support only to the needs of businesses and their employees in the immediate industrial area.

ANALYSIS

Review Criteria for Development Agreements

City Ordinance No. 24209 establishes criteria by which the City may enter into a Development Agreement. For the City Council to approve an Agreement, it must find that the proposed development is consistent with the General Plan, meets important economic, social, environmental or planning goals of the City, and facilitates the development of the subject property. Additionally, the proposed development must be found to either incur unusually substantial public improvement costs and to demonstrate commitment to a very high standard of quality beyond the standard City requirements or the development must be found to make a substantial contribution to the economic development of the City. In the latter case, the development must be for industrial office, research and development or similar use, involve a parcel of at least 5 acres in size, create

or retain at least five hundred jobs, be used as a corporate headquarters by the primary user of the development and qualify as a “Special Handling” project per City requirements. Development Agreements are approved through the adoption of a City ordinance by the City Council. The effective date of the Agreement is the effective date of the ordinance unless a later date or the occurrence of a specific event is specified in the Agreement.

Development Agreements may be amended or cancelled by the mutual consent of the parties to the Agreement or their successors in interest. An amendment may be granted upon a finding by the City Council that the amendment is consistent with either the General Plan and zoning codes in effect at the time the ordinance authorizing the agreement was adopted, or at the time of any amendment. Review of an amendment is limited to consideration of those elements proposed to be added or changed.

Transferable Floor Area Credits in North San Jose

Approval of the proposed Development Agreement would provide the project developer with several benefits, including the transfer of 1,378,568 square-feet of floor area credits to the subject property through the North San Jose Area Development Policy “pool” and the general vesting of applicable existing ordinances and policies pertaining to development of the project.

The subject site is located within the North San Jose Area Development Policy area, and is subject to the Policy’s Floor Area Ratio (FAR) limitation of 0.40 for properties within 2000 feet of the light rail. This base FAR limitation restricts the total allowable square footage of building area to 40% of the total site square footage. The subject property has a total site area of approximately 1,785,960 square-feet and would thus normally be limited to 714,384 square-feet of development. However, as stated above, previous entitlements under the original zoning for the property currently allow development of up to 1,421,432 square feet of industrial/office park uses accomplished at the time through the transfer of floor area through the North San Jose Area Development “pool”.

Under the provisions of the Policy, sites within the policy area are developed for non-industrial uses, a transfer of the allowable building square footage can take place from the non-industrial sites to other industrial sites also within the policy area. This potential industrial building square footage is held in a “pool” of transferable floor area credits until the City allocates it to a particular property through the development permit process. Additionally under the policy, when the City issues a Building Permit for a residential unit within the Policy area, 150 square-feet of transferable credit is also added to the pool. City of San Jose policy is to allocate transferable square footage from the pool to development projects that make use of measures that potentially reduce traffic impacts. The City has considered projects with a single large campus user to meet this criteria because such a campus often incorporates commercial support uses such as; employee cafeterias, exercise facilities, employee commute programs and other measures that would help to reduce potential traffic impacts. Floor area credits from this pool were already transferred to the subject property as part of the original permit issued to Hewlett-Packard in 1993 for the subject site.

Benefit to BEA

The subject Agreement incorporates a proposed IP(PD) Planned Development Zoning District (PDC04-002), which would allow the subject property to be developed with an additional 1.3 million “bonus” square-feet from the pool beyond the site’s existing entitlements of 1,421,432 square-feet. BEA has requested that this additional 1,378,568 square-feet of floor area credits be transferred to the subject property as a key element of the Development Agreement resulting in an FAR of approximately 1.57. The square footage pool balance shows a deficit of approximately 650,000 square-feet of transferable floor area credits, as a result of the previously approved eBay Development Agreement. The full development of the BEA project will require that additional credits, beyond those vested as part of the eBay project, be allocated to the BEA property.

The proposed Agreement sets forth terms for this future allocation, specifying as follows: beginning January 1, 2006, the City would first complete its obligation to eBay under its Development Agreement, by allocating 75% of floor area credits accumulated in the pool (up to 650,000 square-feet). This Agreement entitles BEA to receive 75% of the remaining 25% of accumulated square footage in the City's pool of transferable floor area credits. Once the City's obligation to allocate floor area credits to eBay is complete, BEA will then receive 75% of all subsequent square footage accumulated into the pool up to a total of 1,378,568 square-feet, leaving the remaining 25% of accumulated pool square footage to be allocated to a North San Jose project at the City's sole discretion. Because the Planned Development Zoning incorporated into this Development Agreement provides entitlement for development of the entire 2.8 million square-feet, the City will monitor the pool square footage available for allocation to BEA prior to issuance of Planned Development Permits and Building Permits for each future phase of the project.

In addition to the transfer of floor area credits, the Agreement generally vests the development standards stipulated in the pending Planned Development Zoning (PDC04-002) to the benefit of BEA. BEA may develop the site at any time during the term of the Agreement in accordance with the pending Planned Development Zoning and General Plan designation applicable at the time when the Agreement is effective, or in accordance with current standards at BEA's discretion. Some regulations, including Building Codes and regional, State or Federal water quality requirements, would not be vested and as subsequent phases of the project receive permits, the regulations at that point in time would be in effect.

The subject Agreement would have a term of 20 years beginning on January 1, 2006. During this term, BEA would retain the full right to utilize the pool allocation described above, and be able to request additional entitlements on the site in accordance with the vested development regulations. Under the provisions of the associated Planned Development Zoning, once a future Planned Development Permit is approved and a Building Permit is implemented for any portion of the project, BEA would enjoy a similar vested ability to develop the remainder of the site in accordance with the pending PD zoning through that mechanism.

BEA would also enjoy the ability to transfer the property to up to three other entities (End Users) described in the Agreement while maintaining all of the other benefits included within the proposed Agreement. Under such a transfer, those other entities could develop the subject property utilizing the transferable floor area credits provided under this Agreement, and subject to the vested development regulations. BEA also has the right to transfer the property in any form to another entity, with the City then retaining the right to restrict the allocation from the FAR pool as to such properties.

Benefit to City

In exchange for providing the applicant, BEA, with the benefits discussed above, the approval of the Development Agreement will facilitate the development of an important industrial park site in North San Jose with a significant amount of building square footage (2.8 million square-feet), providing for the City's continuing economic development and long term employment goals. The PD zoning to be vested with this Agreement contains development standards to provide for urban massing, height and scale along the North First Street corridor and pedestrian, and transit-oriented design elements. This future design of a more intensive industrial park development may serve as a cornerstone in the City's ongoing review of the North San Jose Area Development Policy and proposals for additional industrial square footage to be focused compactly along the light rail corridor. Additionally, BEA has agreed to actively work with the City to ensure that the sales and use taxes related to operations and activities on and in connection with the subject property will be strategically reported and allocated by the applicant in accordance with applicable laws to maximize the City's sales and use tax revenues. This reporting strategy is used successfully for other industrial uses in San Jose and can represent significant additional revenue annually.

Conclusion

The Development Agreement, as proposed, has been prepared to conform with all applicable City policies, including the General Plan, economic, social and environmental goals of the City, and the regulations governing the issuance of Development Agreements. Furthermore, it would further the City's Economic Development Strategy as set forth in the General Plan. In response to the applicant's request, the City Attorney's office has prepared the text for a Development Agreement that incorporates the applicant's needs and is consistent with the recommendation of Planning staff. Staff recommends that the Planning Commission recommend that the City Council approve the Development Agreement as proposed by the applicant and as drafted in cooperation between staff, BEA, and the Office of the City Attorney.

PUBLIC OUTREACH

The property owners within a 1000-foot radius of the project site were sent a notice regarding the proposed project's pending Environment Impact Report and as part of an environment public scoping meeting which was held on February 18, 2004. They also received a notice regarding the public hearings to be held on the subject project before the Planning Commission and City Council. In addition, the community can be kept informed about the status of amendments on the Department's web-site, which contains information on the rezoning process, and each individual pending project. No comments were received on this specific project at the public scoping meeting.

Staff did receive one letter in support of the project from a nearby property owner, GHB-The Market Place LP, who feels that the proposed development will be a benefit to both the City of San Jose and to the surrounding neighborhood (see attached letter).

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the requested Development Agreement Amendment for the following reasons:

1. The Development Agreement conforms to the designations of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram as proposed to be amended.
2. The Development Agreement conforms to the requirements of the IP(PD) Planned Development Zoning District.
3. The Development Agreement conforms to the requirements of the Development Agreement Ordinance.
4. The proposed Development Agreement supports the General Plan Economic Development Strategy.